IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.691 of 2002

in

WRIT PETITION NO.732 OF 2002

Mr.Azim A.Charania
Fidai Baug, Silver Jubilee Bldg,
1st Floor, V.P.Road, Andheri (W)
Mumbai-400 058. .. Appellant

vs

The Managing Director
Development Credit Bank Ltd
154, S.V.Patel Road, Dongri (E)
Mumbai- 400 009. .. Respondent

Mr.Mohan Bir Singh for Appellant
Mr.Piyush Shah for Respondent

CORAM : Sri.R.M.S.Khandeparkar and Sri.A.V.Nirgude, JJ
DATED : 23rd April, 2008

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J)

1. This appeal arises from an order dated 11th March 2002 passed in Writ Petition No.732 of 2002. The impugned order is sought to be challenged before us on three grounds. Firstly, that the appellant under part I of the Award was declared to be a workman and therefore the duties which were sought to be allotted to the appellant were attached to the post of a supervisor or a manager, and therefore refusal to perform the same thereof could not have been considered as a misconduct on the part of the appellant. Secondly, the tribunal

failed to consider as to which were the 10 days on which the appellant was absent and without considering the same held that he absented himself from attending the duties for more than 10 days and thirdly, that the tribunal failed to appreciate that several disputes which were also involved concerning the petitioner were pending for conciliation under the Industrial Disputes Act on the date of the dismissal and hence the action of dismissal was in breach of section 33 of the Industrial Disputes Act, 1947 as the respondent-bank did not file any permission/approval application. It is the contention on the part of the appellant that all the three aspects were totally ignored by the tribunal while rejecting the petition.

2. A perusal of the impugned order of the learned Single Judge apparently discloses that the challenge was essentially on the ground that there was no proper appreciation of the evidence by the tribunal and that therefore confirmation of the dismissal order by the tribunal was bad. The impugned order further discloses that the learned Single Judge having perused the record found that the respondent-bank had produced sufficient

evidence in support of the charges levelled against the appellant and the tribunal on proper appreciation thereof had arrived at a finding upholding the order of dismissal of the appellant.

3. A perusal of the impugned order nowhere discloses any of the three grounds which are sought to be raised before us were ever canvassed before the learned Single Judge. It is settled law that unless the grounds are first canvassed before the original authority, question of allowing those grounds to be raised for the first time before the appellate authority does not arise, unless such grounds either relate to the point of jurisdiction or go to the root of the matter and are purely points of law which do not require appreciation of facts. All the three grounds which are sought to be argued in this appeal apparently require appreciation of the materials on record. They relate to the facts pertaining to the attendance of the appellant, performance of the duties as were assigned to the appellant and as to whether there were more than one proceeding pending in relation to the appellant, what were the various disputes between the parties, stages at which those disputes were

pending at the time when the matter was dealt with by the tribunal and being so, they are not pure questions of law as such.

4. Considering the same unless those points were first raised and canvassed before the learned Single Judge, question of allowing the appellant to raise the said points for the first time in appeal does not arise.

5. Besides, a perusal of the copy of the memo of petition discloses that the first two points which are sought to be canvassed were never raised before the learned Single Judge in Writ Petition. It is settled law that in the absence of the points firstly being raised in the Writ petition and recorded in the judgment to have been argued before the learned Single Judge, if the party wants to contend that such points were in fact argued before the learned Single Judge it is necessary for the party to file an affidavit to that effect before the same Judge who has decided the matter. Admittedly no such affidavit has ever been filed before the learned Single Judge.

6. As regards the third point, as already stated

above, it is not a pure question of law nor it goes to the root of the matter. Services of the appellant have been terminated on four different counts. The tribunal has upheld the decision of the management on all the four counts. The findings arrived at by the tribunal are found to be borne out from the record. Being so, we do not find any justification to allow the appellant to raise the said points for the first time in appeal.

7. Perusal of the impugned order apparently as already observed above discloses that the learned Single Judge has considered the entire record and having seen that the tribunal has appreciated the entire evidence led by the parties and on proper appreciation of the evidence having arrived at correct findings, has refused to interfere therein. Indeed, there was no case made out for interference in the writ jurisdiction. We find no illegality or infirmity in the impugned order.

8. For the reasons stated above, the appeal fails and is dismissed. However, there shall be no order as to costs.

(A.V.Nirgude, J) **(R.M.S.Khandeparkar, J)**